

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	
SAMHSA Petition for Permanent Reassignment)	CC Docket No. 07-271
of Three Toll Free Suicide Prevention Hotline)	
Numbers)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	
_____)	

**MOTION TO EXPAND THE SCOPE OF THE REMAND PROCEEDING
AND RESET THE SCHEDULE**

The Kristin Brooks Hope Center (“KBHC”), by its attorneys, hereby requests that the scope of the above-referenced inquiry be expanded as described below. KBHC believes that, without this expansion, the remand proceeding initiated following the U.S Court of Appeals for the District of Columbia Circuit ruling in *Kristin Brooks Hope Center v. Federal Communications Commission*, Case No. 09-1310 will be inadequate to cure the defects found by the Court. As described below, unless the Substance Abuse and Mental Health Services Administration (“SAMHSA”) meets its burden to demonstrate that it cannot address the alleged safety risk it perceives without becoming the subscriber of record for the toll-free numbers, SAMHSA’s Petition will be based on a false premise which does not support Federal Communications Commission (“FCC” or “Commission”) action to depart from its rules and reassign the numbers. SAMHSA provides financial support for many other toll-free numbers without being the subscriber of record; in fact, it has done so in the past for 800-SUICIDE. If SAMHSA can create a public safety crisis simply by choosing not to fund 800-SUICIDE and

then use that refusal as the basis for a “crisis” justifying FCC reassignment of the number, the FCC can expect to see many future petitions from SAMHSA for all the other numbers it currently supports. SAMHSA must prove that there is a connection between the alleged “crisis” and the remedy it seeks: unless SAMHSA is able to show that it cannot fund the numbers without becoming the subscriber of record, SAMHSA’s request will pose a false premise that fails to connect the facts shown to the conclusions drawn.

In its January 14, 2011 *Order and Request for Comment*, the FCC stated that, pursuant to the D.C. Circuit decision and remand, it was requesting comments and supplementation of the record on a few narrow topics. *In the Matter of U.S. Dept. of Health & Human Svcs. Substance Abuse and Mental Health Svcs. Admin. Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers; Toll Free Service Access Codes*, WC Docket No. 07-271, CC Docket No. 95-155, Order and Request for Comment (January 14, 2011) (“Remand Order”). The Remand Order seeks comments on topics relating solely to the finances and costs of KBHC and SAMHSA. *Id.* ¶ 6. These topics, however, improperly limit the scope of the inquiry on remand pursuant to the D.C. Circuit’s directives and the Commission’s obligations under the law.

The D.C. Circuit concluded that the FCC’s decision to depart from its established rule of first come, first served with respect to the assignment of toll-free numbers and take three toll-free numbers obtained by KBHC and permanently assign them to SAMHSA was “arbitrary and capricious” because it “fail[ed] to provide a reasonable explanation that connects the ‘facts found’ and the ‘choice made.’” *Kristin Brooks Hope Center v. Federal Communications Commission*, Case No. 09-1310, Opinion at 9 (December 3, 2010). The Court faulted the Commission for finding that there was a public safety risk and that “SAMHSA was superior to

[KBHC] in both financial stability and quality of services.” *Id.* at 5-8. The Court opinion concluded that the agency review was inadequate and directed a further review on remand.

The instant Commission proceeding was started on January 14, 2011 in response to the ordered remand. Unfortunately, the issues set for review in the remand inquiry omit the single most important set of questions. By asking only financial questions about operation of the numbers, the FCC has accepted the false premise that any financial shortcoming of KBHC requires the remedy of transfer of the numbers to SAMHSA. The issue before the agency is more fundamental than that. FCC regulations clearly establish that the Commission’s policy is to assign toll-free numbers on a first come, first serve basis. 47 C.F.R. § 52.111. Under that policy, KBHC obtained the numbers in question over a decade ago. Before the Commission decides whether KBHC has sufficient finances, it must first determine what standard it will apply when it departs from its regulatory standard and established procedure of assigning numbers on a first come, first served basis: particularly when it is doing so without the consent of the party to which the number was originally assigned, as it is here for the first and only time.

The Commission’s earlier finding supporting transfer of the numbers to SAMHSA was that a public safety crisis was threatened by the possible disconnection of the numbers. This conclusion was based on an analysis and comparison of the finances of KBHC and SAMHSA. The Court found this review to be inadequate. To comply with the Court’s directive, however, the Commission must not simply conduct a renewed review of the parties’ finances. If the Commission is to connect the facts of this case to the conclusions to be drawn, it must first determine whether a public safety crisis exists and then whether the public safety crisis has other reasonable means of prevention that do not require a departure from FCC rules. In particular, this requires a showing by SAMHSA that it must control the numbers before it can provide any

needed financing. This showing is especially important in light of the fact that (1) SAMHSA previously funded the numbers for several years without being the subscriber of record, and (2) SAMHSA currently funds other numbers without being the controlling party. Unless SAMHSA can demonstrate that it is unable (rather than simply unwilling) to provide any needed funding to avert a public safety crisis, then SAMHSA will have failed to carry its burden in justifying a need for departure from FCC rules. Without this element of analysis, the Commission cannot fulfill the remand duty imposed by the Court.

Even this, however, cannot be the full extent of the inquiry. The Commission's inquiry must also include what the cause is of any potential risk to the public safety, as well as the role of the entities involved in either creating or preventing that safety risk. Allowing an entity to manufacture a financial risk and, then profit from the very financial risk that that entity created would set a bad precedent and potentially open a Pandora's box of bad conduct that the Commission would then have to address.

In short, not only must the inquiry start with a more fundamental question than those posed by the Commission, but in the application of any standard to the situation currently before the Commission must consider and include issues other than the issue of the financial stability of KBHC and SAMSHA funding. Currently, there is an insufficient record to justify departing from the FCC regulations and reassigning the number. Any inquiry limited to the issues currently outlined in the Commission's notice would violate the arbitrary and capricious standard for decision-making, as well as disregard the reasoning behind the D.C. Circuit's remand.

To remedy this fatal flaw in the remand proceeding, KBHC requests that the Commission expand the scope of this remand proceeding to consider all of the relevant issues outlined above and seek evidence as to whether a public safety issue existed and still exists, what the cause of

any risk to the public safety was, what the remedies are for any potential public safety risk, and whether permanent reassignment to SAMSHA is necessary to overcome the regulatory presumption that numbers are assigned on a first come, first served basis. In order to allow SAMHSA time to respond to the expanded inquiry, and attempt to meet its burden in showing any alleged limits on its ability to provide financing absent actual legal control of the numbers, KBHC proposes that the Commission extend the filing dates by two weeks.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Motion to Expand the Scope of the Remand and Reset the Schedule* was filed in the Federal Communications Commission ECFS electronic filing system and served by mail upon the below listed counsel via regular, postage prepaid mail this 28th day of January, 2011:

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